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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/220,955	12/28/1998	DONALD WAYNE FEDYK	77682-17	5397

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EXAMINER

DUONG, DUC T

ART UNIT

PAPER NUMBER

2663

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/220,955

Applicant(s)

FEDYK ET AL.

Examiner

Duc T. Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 11, 12 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 25-29 is/are allowed.
- 6) ☒ Claim(s) 22-24 is/are rejected.
- 7) ☒ Claim(s) 8, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Regarding to the amendment filed on February 18, 2003, claims 1-7, 9, 10, and 13-20 are canceled and claims 8, 11, 12, and 21-29 are pending.
2. The indicated allowability of dependent claim 3, now written as independent claim 22, is withdrawn in view of Rochberger et al (U.S. Patent 6,061,736). Rejections based on the newly cited reference(s) follow.
3. The finality of the rejection of the last Office action is withdrawn, based on the newly rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Callon (U.S. Patent 5,699,347) in view of Rochberger et al (U.S. Patent 6,061,736).

Regarding to claims 22-24, Callon discloses a communication network (Fig. 9) and method (Fig. 11) for a node A, B, C (col. 13 lines 46-47) to select a gateway from among at least two gateways 402-412 (col. 13 lines 47-51), comprising the steps of storing (Fig. 7 col. 10 lines 55-57) information associating a metric (distance), see Fig. 5 A col. 7 lines 22-24) with each gateway with respect to each of one or more destinations; upon receiving a connection request to a destination 462 (Fig. 11 col. 15

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lines 19-21), the further steps of deterministically selecting a first gateway having an optimum metric with respect to the destination and sending a connection request to the first gateway 468 (Fig. 11 col. 15 lines 22-25); if a connection can not be established to the destination via the first gateway, randomly selecting a second gateway from among the gateways other than the first gateway, and sending a connection request to the second gateway 470 and 474 (Fig. 11 col. 15 lines 28-42).

Callon fails to teach wherein if more than one gateway have the optimum metric with respect to the destination, the step of deterministically selecting a first gateway randomly selects the first gateway from among the gateways having the optimum metric (claim 22); wherein the step of randomly selecting a second gateway is repeated if a connection cannot be established via the second gateway first selected randomly, and the selection is limited to the gateways through which a connection has not already been attempted (claim 23); and wherein the step of deterministically selecting a first gateway is repeated if a connection cannot be established via the first gateway first selected deterministically, and the selection is limited to the gateways through which a connection has not already been attempted (claim 24).

However, Rochberger discloses a computer network with a plurality of nodes and a plurality of links linking the nodes to each other, wherein if a node have more than one optimum link reaching the destination, randomly choose one link as routing path (Fig. 2A col. 3 lines 44-50) and the corresponding node as a path node; the step of randomly selecting another gateway is repeated if a connection cannot be established via the first or second gateway first selected randomly (Fig. 2A col. 4 lines 1-10, if one link is

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randomly chosen as a routing path over the other link, the other link would be ignored, and vice versa implicitly implied the step of randomly selecting another gateway would be repeated since the process can be done for both links), and the selection is limited to the gateways through which a connection has not already been attempted (it is inherent the selection of another gateway would involve ones that has not already been attempted rather than ones that has already been attempted since the selection of the gateway that has been already attempted cannot be established).

Thus, it would have been obvious to one of ordinary skilled in the art, at the time of the invention, to include the randomly selection of one link with the optimum metric in a plurality of links and repeated so if a connection cannot be established as taught by Rochberger in Callon's system with the motivation for the traffic to be uniformly statistically distributed among the significantly links.

Allowable Subject Matter

6. Claims 8, 11, and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 21, 25-29 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach or make obvious the step or means for "the connection request contains zero or more identifiers identifying domains through which the connection route has already passed, the step of deterministically selecting a first gateway does not select a gateway leading to a domain indicated by the identifiers in

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the connection request, and the step of randomly selecting a second gateway does not select a gateway leading to a domain indicated by the identifiers in the connection request", especially when the connection request is considered within the specific combination of steps recited in method of claims 21, 25, and 26 or device recited in claims 28 and 29. The prior art of record fails to teach or make obvious the step or means for "the metric represents an approximation to the number of domains through which the connection route would pass in reaching the destination with which the metric is associated through the gateway with which the metric is associated", especially when the metric is considered within the specific combination of steps recited in method of claim 27.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 703-605-5146. The examiner can normally be reached on M-Th (8:30 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

DD

March 3, 2003


3/3/03